



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/02/03	Bill No:	SB 157
Tax:	Sales and Use	Author:	Bowen & Alpert
Board Position:		Related Bills:	

BILL SUMMARY:

This bill would enact the "Simplified Sales and Use Tax Administration Act" to, among other things, create in state government a Board of Governance to represent California in meetings related to the Streamlined Sales and Use Tax Agreement.

Summary of Amendments

The amendments to this bill since the previous analysis delete the language that would have provided that the proposed Board of Governance consists of two members of both houses of the Legislature. Now, the composition of the proposed Board is unspecified in the bill.

ANALYSIS

Current Law

Under existing law, California imposes use tax on the use of property purchased from a retailer for use in California, unless the use is specifically exempt from tax by statute. The use tax is imposed on the purchaser. However, if the retailer is engaged in business in California, then the retailer is required to collect the applicable use tax from the purchaser and remit it to the state. The tax that a retailer engaged in business in this state is required to collect from its purchasers constitutes a debt owed by the retailer to the state. The purchaser's liability for the use tax, however, is not extinguished until the tax has been paid to the state or has been paid to a retailer engaged in business in this state who gives the purchaser a receipt showing that the tax has been paid.

Retailers that have no physical presence (or "nexus") in California cannot be required to register with the Board or collect the California sales or use tax. Thus, "remote sales" (sales through mail order, telephone, or the Internet) to Californians from an out-of-state retailers with no nexus in the state are not subject to sales or use tax collection by the retailer.

Under the law, states are prevented from requiring out-of-state sellers that do not have a physical presence in the state to collect the sales or use tax, due to a series of U.S. Supreme Court decisions regarding remote sales. Through its rulings on these cases, the Court has determined that allowing states to require use tax collection by out-of-state sellers would violate the Commerce Clause of the U.S. Constitution, which reserves for Congress the ability to regulate interstate commerce. However, Congress can adopt legislation allowing states to collect the tax on remote sales. Thus far, Congress has chosen not to do so.

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Proposed Law

This bill would, among other things, enact the "Simplified Sales and Use Tax Administration Act" to create in state government a Board of Governance to represent California in meetings related to the Streamlined Sales and Use Tax Agreement. The composition of the proposed Board of Governance is unspecified in the bill.

The bill would become operative January 1, 2004.

Background

In an effort to simplify various states' sales and use tax systems, 39 states (and the District of Columbia) that levy a sales and use tax have participated in the Streamlined Sales Tax Project (SSTP). These participating states are shown in the attachment.

The SSTP adopted the Streamlined Sales and Use Tax Agreement in November 2002, which creates a blueprint for a simplified tax collection system and attempts to remove the burden and cost of tax collection from sellers. The agreement addresses issues associated with tax collections, definitions of the tax base, uniformity of tax bases, electronic registration of sellers, simplification of tax rates, simplification of returns and remittances, uniform sourcing rules, as well as other issues. California has not actively participated in this effort. In order to participate, California must support the mission of the project and requires one of the following:

- 1) enactment of legislation authorizing California's participation
- 2) passage of a legislative resolution expressing the intent of California to participate
- 3) issuance of an executive order, letter of intent or similar written document by the Governor expressing the intent of California to participate
- 4) execution of a memorandum of understanding or similar written document by the Governor and legislative leaders expressing the intent of California to participate, or
- 5) issuance of a resolution, executive order, or similar written document by a body of elected officials charged under a State Constitution with the administration of the tax laws expressing the intent to participate.

A measure that would have required that California participate in the Project was considered in the 2000 Legislative Session. SB 1949 (Costa, et al.) would have directed the Governor or his representative to participate in the Streamlined Sales Tax Project. In his veto message, the Governor stated:

"I am vetoing this bill because California officials already participate in forums where issues of sales and use tax simplification and uniformity are discussed. Examples of these forums include the Multistate Tax Commission, The National Governor's Association, and the Advisory Commission on Electronic Commerce. Therefore, this bill does not appear necessary."

In General

According to the Executive Summary of the Streamlined Sales Tax Project, the Project is conducting its work through a steering committee with co-chairs, four work groups, and a number of sub-groups. Project participants are generally state revenue department administrators but there are also representatives of state legislatures and local governments. Businesses including national retailers, trade associations, manufacturers, direct marketers, telecommunications companies, leasing companies, technology companies, printers, accounting firms, and others have actively participated

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in the Project by offering expertise and input, reviewing proposals, suggesting language, and testifying at public hearings.

The Agreement includes the following key features:

- Uniform definitions within tax laws. Legislatures still choose what is taxable or exempt in their state. However, participating states will agree to use the common definitions for key items in the tax base and will not deviate from these definitions. As states move from their current definitions to the Project's definitions, a certain amount of impact on state revenues is inevitable. However, it is the intent of the Project to provide states with the ability to closely mirror their existing tax bases through common definitions.
- Rate simplification. States will be allowed one state rate and a second state rate in limited circumstances (food and drugs). Each local jurisdiction will be allowed one local rate. A state or local government may not choose to tax telecommunications services, for example, at one rate and all other items of tangible personal property or taxable services at another rate. State and local governments will accept responsibility for notice of rate and boundary changes at restricted times.
- State level tax administration of all state and local sales and use taxes. Businesses will no longer file tax returns with each local government within which it conducts business in a state. Each state will provide a central point of administration for all state and local sales and use taxes and the distribution of the local taxes to the local governments. A state and its local governments will use common tax bases.
- Uniform sourcing rules. The states will have uniform and simple rules for how they will source transactions to state and local governments. The uniform rules will be destination/delivery based and uniform for tangible personal property, digital property, and services.
- Simplified exemption administration for use- and entity-based exemptions. Sellers are relieved of the "good faith" requirements that exist in current law and will not be liable for uncollected tax. Purchasers will be responsible for paying the tax, interest and penalties for claiming incorrect exemptions. States will have a uniform exemption certificate in paper and electronic form.
- Uniform audit procedures. Sellers who participate in one of the certified Streamlined Sales Tax System technology models will either not be audited or will have limited scope audits, depending on the technology model used. The states may conduct joint audits of large multi-state businesses.
- State funding of the system. To reduce the financial burdens on sellers, states will assume responsibility for funding some of the technology models. The states are also participating in a joint business – government study of the costs of collection on sellers. The Project proposes that states change their sales and use tax laws to conform with the simplifications as proposed by the Project. Thus, the simplifications would apply to all sellers. Sellers who do not have a physical presence or "nexus" are not required to collect sales and use taxes unless Congress chooses to require collection from all sellers for all types of commerce. Sellers without a physical presence can volunteer to collect under the proposed simplifications. Registration by sellers to voluntarily collect sales and use taxes will not infer that the business must pay business activity taxes, such as the corporate franchise or income tax.

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The Streamlined Sales Tax System will provide sellers the opportunity to use one of three technology models. A seller may use Model 1 where a Certified Service Provider, compensated by the states, will perform all of the seller's sales tax functions. A seller may use Model 2, a Certified Automated System, to perform only the tax calculation function. A larger seller with nationwide sales that has developed its own proprietary sales tax software may use Model 3 and have its own system certified by the states collectively. However, some sellers may choose to continue to use their current systems and still enjoy the benefits of the Project's simplifications.

The Streamlined Sales Tax Project envisions two components to the legislation necessary to accomplish the Project's goals. First, states would adopt enabling legislation referred to as the Uniform Sales and Use Tax Administration Act ("Act"). The Act allows the state to enter into an agreement with one or more states to simplify and modernize sales and use tax administration in order to reduce the burden of tax compliance for all sellers and all types of commerce. The Act does not require any amendments to a state's sales and use tax law.

Secondly, states would amend or modify their sales and use tax laws to achieve the simplifications and uniformity required by the participating states working together. The Project refers to this legislation as the Streamlined Sales and Use Tax Agreement ("Agreement"). Some states will require only minor changes to current law to implement the requirements of the Agreement. Other states with more complicated sales tax laws may require significant changes to current law to be in accord with the Agreement.

A certificate of compliance will document each state's compliance with the provisions of the Agreement and cite applicable statutes, rules or regulations, or other authorities supporting such compliance. Public notice and comment will be provided before a state becomes part of the interstate Agreement. A state is in compliance with the Agreement if the effect of the state's laws, rules or regulations, and policies is substantially compliant with each of the requirements of the Agreement. If a state is found to be out of compliance with the Agreement, it will not be accepted into the interstate Agreement or will be sanctioned or expelled by the other participating states. In a voluntary system, sellers who are voluntarily collecting sales taxes for participating states may decide to no longer collect for the expelled state. Also, that state may not have a vote on changes in the Agreement.

A governing board will be comprised of representatives of each member state of the Agreement. Each member state is entitled to one vote on the governing board. The governing board is responsible for interpretations of the Agreement, amendments to the Agreement, and issue resolution. A State and Local Government Advisory Council and a Business and Taxpayer Advisory Council from the private sector will advise the governing board.

The Agreement will become effective when at least ten states with twenty percent of the total population of all states imposing a state sales tax have enacted the conforming legislation and are found to be in compliance with the requirements of the Agreement.

The project website is www.streamlinedsalestax.org.

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COMMENTS

1. **Sponsor and purpose.** This measure is sponsored by the author in an effort to enable California to have a voice in the development of the Streamlined Sales and Use Tax Agreement.
2. **April 2, 2003 amendments.** The amendments delete the specified members of the Board of Governance. The bill had named two members of the Senate chosen by the Senate Committee on Rules and two members of the Assembly chosen by the Speaker of the Assembly as the Board of Governance.
3. **What impact would enactment of this measure have on California law?** Enactment of this measure would not affect California's Sales and Use Tax Law. Instead, it would simply authorize participation in the Project. California would then be represented as one vote with the other participating states in further development of the Agreement. To the extent that many components of the agreement have already been adopted by the existing participating states, it is unclear what input California would have now, if any, to those components. However, since the Project is still in the midst of developing additional uniform definitions and provisions that could materially impact California's Sales and Use Tax administration, California's participation in the project would give the State a voice in the development process. Participation in the project would not change any law or tax reporting/collection responsibilities of remote sellers. What this bill would do is simply enable California to actively participate in the Project and future development of the Streamlined Sales and Use Tax Agreement. Further legislation would be required to amend California's Sales and Use Tax Law to conform to the provisions of the Agreement.
4. **What would the Agreement, itself, do for remote sellers?** In general, participating states in the SSTP anticipate that the interstate agreement will lead to voluntary participation by businesses and the subsequent petitioning of Congress to allow states to require out-of-state collection of their sales or use taxes. It is important to note, however, that the simplification effort would not in itself result in states being able to require that out-of-state sellers without nexus begin collecting the sales or use tax. Rather, the interstate agreement represents an effort on behalf of the participating states to demonstrate to Congress that the simplified sales tax system does not impose unfair costs on out-of-state businesses and thus would not interfere with interstate commerce. Federal legislation would still be needed that would allow states to require out-of-state sellers without a physical presence in the taxing state to collect the use tax.
5. **What about other multistate tax organizations?** While California does participate in a number of multistate organizations—including the Federation of Tax Administrators, the Multistate Tax Commission, the National Conference of State Legislatures, and the National Governors' Association—the SSTP has become the avenue through which each of these organizations have put their efforts with respect to sales and use tax simplification.

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6. **The Members of the Board of Equalization voted to have California be an “observer state.”** A discussion concerning the level of participation that the Board of Equalization should have in the Project was considered by the Board at its March 26, 2003 meeting. The Board voted to participate as an “observer state.” As an observer state, the Board is now allowed to participate in the Project meetings and provide information to interested parties with reports and analyses to better understand the impact of the Project on California. However, as an observer state, California does not have a vote in development of provisions of the Agreement. This bill would authorize California to become a “participating state” which would include the same privileges as an “observer state”, but, in addition, it would enable California to actually cast a vote on the development of the provisions of the Agreement.

COST ESTIMATE:

Enactment of this measure would not result in administrative costs to the Board, since the bill does not currently specify the Board’s role, if any, in participation of the Project.

REVENUE ESTIMATE:

By authorizing California to become a participating state to the Streamlined Sales and Use Tax Agreement, there would be no impact to the State’s sales and use tax revenues. However, incorporation of the provisions of the Agreement into California’s Sales and Use Tax Law would have revenue implications (both positive and negative). The extent of this impact is currently unknown.

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